

Message Text

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ORIGIN OPIC-06

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L/T:JABOYD

AF/C:RRSTRAND

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P 292252Z OCT 75

FM SECSTATE WASHDC

TO AMEMBASSY KINSHASA PRIORITY

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E.O. 11652: N/A

TAGS: EINV

SUBJECT: OPIC INSURANCE FOR SMTF

1. OPIC'S BOARD OF DIRECTORS ON SEPTEMBER 9, 1975 AUTHORIZED OPIC PRESIDENT, IN HIS DISCRETION, TO ISSUE CONTRACTS OF POLITICAL RISK INSURANCE TO COVER APPROXIMATELY 55 MILLION DOLLARS OF BANK LOANS TO SMTF BY CROCKER NATIONAL BANK, CHEMICAL BANK AND THE FIRST NATIONAL BANK OF CHICAGO AND APPROXIMATELY 30 MILLION OF SUBORDINATED SHAREHOLDER LOANS BY AMOCO INTERNATIONAL LTD. OPIC WILL ACT ON THE BASIS OF (I) THE ISSUANCE BY THE GOZ OF "FURTHER ASSURANCES" TO OPIC, AND (II) FINDINGS BY OPIC'S MANAGEMENT THAT AN EFFECTIVE IMF STANDBY ARRANGEMENT HAS BEEN OR IS ABOUT TO BE EXECUTED BY GOZ, AND THAT SMTF HAS IDENTIFIED AND ARRANGED FOR A SATISFACTORY TRANSPORTATION

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SYSTEM, OTHER THAN THROUGH ANGOLA, TO MEET ITS CONSTRUCTION REQUIREMENTS. OPIC MANAGEMENT APPRECIATES THAT BLATANT REPRESENTATION TO GOZ OF IMF STANDBY AS PRECONDITION FOR OPIC INSURANCE COULD ACTUALLY IMPEDE PRESENT MOVEMENT

TOWARD NEGOTIATION OF STANDBY. AT SAME TIME, AWARENESS THAT THIS TOO IS RIDING ON CONTINUED PROGRESS TOWARD IMF AGREEMENT COULD BE ADDITIONAL INCENTIVE TO GOZ TO PRESEVERE IN ITS PRESENT COURSE. IMF "CONDITION" WILL BE STATED NOWHERE IN DOCUMENT EXECUTED WITH GOZ (THOUGH IT WILL

APPEAR IN CONTRACTS WITH INSURANTS), BUT EMBASSY MAY, AT ITS DISCRETION, MAKE GOZ AWARE OF IT IN ANY WAY EMBASSY CONSIDERS APPROPRIATE.

2. EARLIER CABLE REQUESTS EMBASSY CONCURRENCE FOR TRAVEL BY OPIC DEPUTY GENERAL COUNSEL, CECIL HUNT, TO KINSHASA IN FIRST WEEK OF NOVEMBER TO OBTAIN "FURTHER ASSURANCES" FOR SMTF PROJECT. FYI, OPIC BOARD NORMALLY REQUIRES MANAGEMENT TO OBTAIN SUCH "FURTHER ASSURANCES" FOR LARGE AND SENSITIVE PROJECTS SUCH AS EXTRACTIVE PROJECTS INVOLVING MORE THAN 25 MILLION OF INSURANCE.

3. OPIC REQUESTS EMBASSY VIEW AS TO WHICH OFFICIALS OF GOZ SHOULD EXECUTE "FURTHER ASSURANCES" ON BEHALF OF GOVERNMENT. OPIC ASSUMES THAT THE GOZ OFFICIAL AUTHORIZED TO EXECUTE THE MAJOR PROJECT DOCUMENTS ON BEHALF OF GOZ AT THE CLOSING WOULD BE PROPER ONE TO EXECUTE "FURTHER ASSURANCES" AND THAT EXECUTION BY FOREIGN MINISTER OR OTHER OFFICIAL AUTHORIZED TO IMPLEMENT OPIC AGREEMENT IS DESIRABLE.

4. THE "FURTHER ASSURANCES" CAN BE EXECUTED PRIOR TO OR AT THE CLOSING PRESENTLY EXPECTED TO BE ON OR ABOUT NOVEMBER 24. SINCE OPIC ANTICIPATES EXECUTING ITS INSURANCE CONTRACTS ON THE CLOSING DATE, OPIC WILL REQUIRE THE "FURTHER ASSURANCES" NO LATER THAN THE CLOSING DATE.

5. IN ADDITION TO OBTAINING "FURTHER ASSURANCES" FOR SMTF PROJECT HUNT WISHES TO DISCUSS INTER CONTINENTAL HOTEL PROJECT WITH APPROPRIATE GOZ OFFICIALS. HE ALSO WISHES TO CLARIFY FOREIGN GOVERNMENT APPROVAL PROCEDURES FOR OPIC LIMITED OFFICIAL USE
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INSURANCE WITH APPROPRIATE GOZ OFFICIALS. EMBASSY ASSISTANCE APPRECIATED IN MAKING APPOINTMENTS WITH GOZ OFFICIALS FOR FOREGOING MATTERS AS WELL AS OFFICIALS IN THE MINISTRIES OF MINING, FINANCE, TRANSPORTATION, AND CENTRAL BANK HAVING RESPONSIBILITY IN AREAS PERTINENT TO POINTS NOTED IN THIS MESSAGE AND TEXT. WILL WELCOME COORDINATION OF SCHEDULE WITH THAT OF EXIM BANK TEAM INsofar AS PRACTICAL.

6. SUGGESTED TEXT OF "FURTHER ASSURANCES, FOLLOWS. PLEASE ADVISE OPIC IF EMBASSY PERCEIVES ANY PROBLEMS WITH LANGUAGE. OPIC WILL SEND FRENCH TRANSLATION ASAP. OPIC WOULD

APPRECIATE EMBASSY'S VIEW IF TEXT OF "FURTHER ASSURANCES" SHOULD BE SUBMITTED TO GOZ PRIOR TO HUNT ARRIVAL TO FACILITATE EXECUTION.

7. SUGGESTED TEXT: EXCELLENCY:

---I HAVE THE HONOR TO REFER TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND ZAIRE (REPUBLIC OF THE CONGO) EFFECTED BY EXCHANGE OF NOTES SIGNED AT KINSHASA (LEOPOLD-VILLE) OCTOBER 25 AND NOVEMBER 17, 1962 AND ENTITLED "INVESTMENT GUARANTIES" (THE "AGREEMENT").

---I ALSO HAVE THE HONOR TO REFER TO THE ESTABLISHMENT CONVENTION DATED SEPTEMBER 19, 1970 BETWEEN THE REPUBLIC OF ZAIRE (UNDER ITS FORMER NAME OF THE DEMOCRATIC REPUBLIC OF THE CONGO) AND CERTAIN PRIVATE PARTIES (THE "CONVENTION").

---IT IS THE UNDERSTANDING OF THE GOVERNMENT OF THE UNITED STATES THAT PURSUANT TO THE CONVENTION THE SOCIETE MINIERE DE TENKE-FUNGURUME ("SMTF") A ZAIRIAN CORPORATION JOINTLY OWNED BY THE REPUBLIC OF ZAIRE, CHARTER CONSOLIDATED ZAIRE LIMITED, AMOCO MINERALS COMPANY, MITSUI AND CO., LTD., BUREAU DE RECHERCHES GEOLOGIQUES ET MINIERES, OMNIUM DE MINES AND LEON TEMPELSMAN AND SON, INC., SHALL PROCEED WITH THE CONSTRUCTION AND OPERATION OF A COPPER AND

COBALT MINING AND METALLURGICAL PROJECT IN SHABA PROVINCE, ZAIRE (THE "PROJECT"). IT IS FURTHER UNDERSTOOD BY MY LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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GOVERNMENT THAT THE PROJECT SHALL BE UNDERTAKEN AND ADMINISTERED IN ACCORDANCE WITH THE TERMS OF CERTAIN DOCUMENTS EXECUTED BY AND AMONG THE OWNERS OF SMTF, INCLUDING THE REPUBLIC OF ZAIRE, AND CERTAIN INSTITUTIONS EXTENDING CREDIT OR MAKING LOANS TO THE PROJECT, COPIES OR DRAFTS OF WHICH HAVE BEEN FURNISHED TO THE UNITED STATES GOVERNMENT AGENCIES INVOLVED. THESE CERTAIN DOCUMENTS ARE THE SMTF AND SHAREHOLDERS' AGREEMENT, THE EURO CREDIT FACILITY AGREEMENT, THE TRUST DEED, THE PLEDGE AGREEMENT, THE PARENT GUARANTEE AGREEMENTS, THE CHASE MANHATTAN BANK AND EXPORT-IMPORT BANK OF THE UNITED STATES AGREEMENT, THE ASSIGNMENT OF ACCOUNTS RECEIVABLE, THE PLEDGE AGREEMENT WITH RESPECT TO COPPER INGOTS, THE AGENCY AGREEMENT, THE REPUBLIC OF ZAIRE AGREEMENT, AND THE BANQUE DU ZAIRE AGREEMENT (COLLECTIVELY THE "DOCUMENTS").

---AMOCO INTERNATIONAL LTD., A BERMUDA CORPORATION AND AN AFFILIATE OF AMOCO MINERALS COMPANY INC., OR SUCH OTHER AFFILIATE OF AMOCO MINERALS COMPANY INC., AS MAY BE SUBSTITUTED FOR AMOCO INTERNATIONAL LTD.; THE CROCKER NATIONAL

BANK (SAN FRANCISCO, CALIFORNIA, U.S.A.);THE CHEMICAL BANK (NEW YORK, NEW YORK, U.S.A.); AND THE FIRST NATIONAL BANK OF CHICAGO (CHICAGO, ILLINOIS, U.S.A.) (COLLECTIVELY, THE "INVESTORS") HAVE APPLIED TO THE OVERSEASPRIVATE INVESTMENT CORPORATION ("OPIC"), AN AGENCY OF THE GOVERNMENT OF THE UNITED STATES, FOR INSURANCE, IN ACCORDANCE WITH TITLE IV OF THE UNITED STATES FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED, OF THEIR RESPECTIVESUBORDINATED AND SENIOR DEBT INVESTMENTS IN SMTF. OPIC IS DISPOSED TO JOIN IN ISSUING THE REQUESTED INSURANCE WHICH WOULD BE ISSUED THROUGH THE OVERSEAS INVESTMENT INSURANCE GROUP, AN UNINCORPORATED GROUP OF INSURERS ORGANIZED FOR THE PURPOSE OF COOPERATING WITH OPIC IN ESTABLISHING UNDER THE FOREIGN ASSISTANCE ACT A POOL WITH RESPECT TO FOREIGN INVESTMENT INSURANCE AND REINSURANCE, AND THROUGH SUCH OTHER CO-INSURANCE OR REINSURANCE ARRANGEMENTS AS MAY BE MADE FOR THE CONDUCT OF THE OPIC PROGRAM. ACCORDING TO PARAGRAPH 2

OF THE AGREEMENT, HOWEVER, NO AFFIRMATIVE ACTION MAY BE TAKEN BY MY GOVERNMENT IN RESPECT OF THESE APPLICATIONS UNTIL IT HAS RECEIVED THE OFFICIAL NOTIFICATION OF THE LIMITED OFFICIAL USE
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GOVERNMENT OF ZAIRE 1) THAT IT APPROVES THE PROJECT AND 2) THAT IT APPROVES THE INSURANCE BY OPIC, AND BY SUCH CORPORATIONS, ASSOCIATIONS, AND OTHER ENTITIES AS MAY BE ASSOCIATED BY OPIC AS CO-INSURERS AND FOR WHOM OPIC MAY ACT AS AGENT, OF THE REFERENCED INVESTMENTS IN THE PROJECT

(THE "APPROVALS"). ADDITIONALLY, BECAUSE OF THE CONCERN OF MY GOVERNMENT THAT ALL OVERSEAS INVESTMENT PROJECTS WITH WHICH UNITED STATES NATIONALS ARE ASSOCIATED BE DESIGNED AND IMPLEMENTED TO THE FULL SATISFACTION OF THE GOVERNMENT OF THE COUNTRY IN WHICH THEY ARE ESTABLISHED MY GOVERNMENT DESIRES CERTAIN FURTHER ASSURANCES FROM THE GOVERNMENT OF ZAIRE (THE "ASSURANCES"), TO WIT:

---THAT THE GOVERNMENT OF ZAIRE CONFIRMS THE VALIDITY AND EXISTENCE OF THE AGREEMENT AND THE CONVENTION;

---THAT THE GOVERNMENT OF ZAIRE HAS ITSELF EXAMINED THE DOCUMENTS AND HAS RETAINED COUNSEL TO FURTHER EXAMINE AND OBTAIN ANY NECESSARY MODIFICATIONS OF THEM, AND IS SATISFIED WITH THE TERMS, CONDITIONS, AND PROVISIONS THEREOF;

---THAT THE GOVERNMENT OF ZAIRE HAS INVESTIGATED THE MODE IN WHICH THE PROJECT HAS BEEN ESTABLISHED, THE TERMS AND QUALITY OF THE PROPOSED MANAGEMENT THEREOF, AND THE TECHNOLOGY AND SCHEDULE ACCORDING TO WHICH IT WILL BE CARRIED OUT AND IS SATISFIED WITH SAME;

---THAT THE GOVERNMENT OF ZAIRE ACKNOWLEDGES THAT THE OVERSEAS PRIVATE INVESTMENT CORPORATION IS AN AGENCY OF THE GOVERNMENT OF THE UNITED STATES WITH FULL RIGHTS TO SUCCEED TO ALL RIGHT, TITLE AND INTEREST OF THE INVESTORS IN, TO, AND UNDER THE DOCUMENTS AND, ANY OTHER AGREEMENT TO THE CONTRARY NOTWITHSTANDING, TO AVAIL ITSELF, TOGETHER WITH ASSOCIATED INSURERS, OF ALL RIGHTS, BENEFITS, AND REMEDIES PROVIDED BY THE DOCUMENTS; AND

---THAT THE GOVERNMENT OF ZAIRE ACKNOWLEDGES THAT IN ISSUING INSURANCE CONTRACTS TO THE INVESTORS OPIC IS RELYING SPECIFICALLY ON THE APPROVALS AND ASSURANCES HEREIN CONTAINED.

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---I WOULD BE GRATEFUL IF THE GOVERNMENT OF ZAIRE WOULD SIGNIFY ITS OFFICIAL NOTIFICATION OF THE APPROVALS AND ITS AFFIRMATION OF THE ASSURANCES BY COUNTERSIGNING THIS NOTE AS INDICATED.

---ACCEPT EXCELLENCY THE RENEWED ASSURANCES OF MY HIGHEST CONSIDERATION.

DECLASSIFY OCTOBER 24-1976. KISSINGER

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